

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 21174

Application 30933 of

**Michael B. and Lorene Kuimelis
3510 Unocal Place, Suite 100
Santa Rosa, CA 95403**

filed on **August 2, 1999**, has been approved by the State Water Resources Control Board (State Water Board)
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Unnamed Stream

Tributary to:

Mill Creek thence

Dry Creek thence

Russian River

within the County of **Sonoma**.

2. Location of point of diversion

By California Coordinate System of 1927, Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
North 340,800 feet and East 1,741,171 feet	SW ¼ of NW¼	30	9N	9W	MD

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
Recreation	SW¼ of NW¼	30	9N	9W	MD	At the Reservoir
Fire Protection						
Irrigation	NE¼ of NE¼	25	9N	10W	MD	2.5
	SE¼ of NE¼	25	9N	10W	MD	2.0
	NW¼ of NW¼	30	9N	9W	MD	8.5
	SW¼ of NW¼	30	9N	9W	MD	12.0
					TOTAL	25

The place of use is shown on a map on file with the State Water Board.

5. The water appropriated shall be limited to the quantity that can be beneficially used and shall not exceed 20 acre-feet per annum (afa) to be collected from December 15 of each year to March 31 of the succeeding year.
(0000005C)
6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)
7. The capacity of the reservoir covered by this permit (Application 30933) shall not exceed 20 acre-feet.
(0000005N)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2015.
(0000009)
9. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir that is not authorized for appropriation under this permit can be released. Before storing water in the reservoir, permittee shall furnish evidence that substantiates that the outlet pipe, or alternative facility, has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.
(0050043B)
10. For the protection of fish and wildlife, permittee shall during the period of December 15 through March 31, bypass a minimum of 0.09 cubic feet per second (cfs) as measured directly below the point of diversion. The total stream flow immediately upstream of the point of diversion shall be bypassed whenever the stream flow is less than 0.09 cfs.
(0140060)
11. If the bypass facilities constructed under this permit are rendered inoperable for any reason, the diversion of water under this permit shall cease until such time as the bypass facility is operable.
(0050400)
12. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Russian River Watershed are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated by order of the State Water Board, made after notice to interested parties and opportunity for hearing.
(0230090A)
13. The State Water Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the State Water Board concerning availability of water and the protection of beneficial uses of water in the Russian River. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing.
(0000080)
14. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than permittee would have used absent the appropriation authorized by this permit.

Based on the information in the Division of Water Rights' (Division) files, riparian water has not been used on the place of use. Therefore, consistent with this term, permittee may not divert any water under basis of riparian right for use on the place of use authorized by this permit unless diversions under this permit are reduced so that the total amount of water diverted under this permit in combination with any claimed riparian right is less than 20 afa.

With the Chief of the Divisions' approval, information on the amount of water historically used under claim of riparian right may be updated, and permittee may use water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Division Chief quantifying the amount of water that permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Division Chief may approve or reject any proposal by permittee to use water under the basis of riparian right on the place of use authorized by this permit.

(0560300B)

15. Within six months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division that will demonstrate compliance with the flow bypass terms specified in this permit. An acceptable Compliance Plan must include the following:
- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes, etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
 - b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
 - c) A time schedule for the installation of these facilities.
 - d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
 - e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by the permittee for ten years from the date of collection or until the permittee is issued a water right license for this project, whichever is later. The permittee shall provide the monitoring data to the Division Chief upon request.

Any non-compliance with the terms of the permit shall be reported by the permittee promptly to the Division Chief.

If the Division Chief determines the Compliance Plan is not acceptable, the permittee shall resubmit the Compliance Plan, with the deficiencies identified by the Division Chief corrected, within 60 days of notification by the Division Chief that the plan is not accepted.

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized.

(0550070)

16. Prior to the consumptive use of water under this permit, permittee shall properly install and maintain an in-line flow meter(s) capable of measuring the cumulative amount of water diverted for use under this permit. The metering device(s) shall be installed between the reservoir and the place of use or any intervening diversion works or conveyance system, including, but not limited to, storage tanks and groundwater well pumping systems. Permittee shall maintain a record of the end-of-the-month meter readings. Permittee shall make these monthly records available to, or submit them whenever requested by, the Division.

(0100900)

17. An Erosion Control and Revegetation Plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Chief of the Division, prior to starting construction of the reservoir and vineyard associated with this permit. The Plan shall comply with the Sonoma County Vineyard Erosion and Sediment Control Ordinance in place at the time of the reservoir construction. The Plan will prescribe pollution prevention measures for the project and identify persons responsible for the implementation and maintenance of the measures. Pollution prevention measures

will include measures for erosion control during and after construction (i.e., temporary and permanent seeding, water bars, vineyard terracing, reservoir outlet stabilization, etc.), sediment control (i.e., temporary sediment traps, straw roll sediment barriers, etc.), and spill prevention and response measures for hazardous materials used during construction. The Plan shall include an inventory of the trees to be removed, identification of the proposed planting site(s), species to be planted, and how they will be protected and maintained in perpetuity. Plants used for revegetation shall be native to Sonoma County. Before storing water in the reservoir, permittee shall furnish evidence to the Chief of the Division that substantiates that the Plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes.

(0000207)

18. This permit is specifically subject to the prior rights of Kurt and Lea Gilg, or assigns, under appropriation issued pursuant to Small Domestic Registration Certificate R390 (Application D30758R).
(0160301)
19. Whenever the prior storage rights of Kurt and Lea Gilg, or assigns, under Small Domestic Registration R390 issued pursuant to Application 30758R, are not satisfied by April 15 of any year, water collected to storage under this permit during the current collection season shall be immediately released at the maximum practicable rate to the extent necessary to satisfy said prior downstream storage rights.
(0160302)
20. Permittee shall notify Kurt and Lea Gilg, or assigns, at least 24 hours in advance of any releases from storage.
(0160303)
21. Permittee shall install and properly maintain a staff gage in the reservoir, satisfactory to the State Water Board, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on a monthly basis and on December 14 of each year. Such readings shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee. The State Water Board may require the release of water that cannot be verified as having been collected to storage prior to October 1 of each year.
(0000047)
22. A site-specific geologic investigation shall be performed for the reservoir site and proposed vineyard for the presence of unstable soils as per Sonoma County Policy PS-1f. The investigation report shall describe the investigation performed, any geologic hazards and include mitigation measures necessary to reduce risks to acceptable levels. These measures shall be implemented during vineyard and reservoir construction. A copy of the report approved by Sonoma County shall be submitted to the Chief of the Division before a license pursuant to this permit is issued.
(0390800)
23. Prior to construction of the reservoir the permittee will consult with the appropriate Regional Water Quality Control Board. If required by the Regional Board, the permittee will comply with requirements of the National Pollution Discharge Elimination System Stormwater Discharge Permitting Program.
(0340306)
24. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into waters of the State. When construction operations are completed, any excess materials or debris shall be removed from the work area.
(0400801)
25. For the protection of riparian habitat, permittee will establish a setback of either 50 feet or the distance specified in Sonoma County Code, Chapter 30, Article V. Section 26-66-030, whichever is greater. This minimum setback is based on the assumption that Sonoma County will consider the 25-acre vineyard project to be irrigated with water diverted under this permit a Level II or III authorized vineyard planting.

The stream setback shall be measured from the top of the bank on both sides of the stream. No activity shall occur within the setback area, including, but not limited to, grading, roads, fencing, storage areas, and irrigation. Access roads are excepted from this prohibition.

(0460502)

26. Prior to construction or grading activities designated in this permit, the wetland identified during biological resources surveys for this project shall be staked and flagged by a qualified biologist, and a buffer zone that extends no less than 25 feet beyond the defined wetland boundary shall be established. No trenching, cultivation, or other disturbance shall take place within the preserved wetland area and buffer zone.

(0400504)

27. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails. The Chief of the Division shall be notified of the discovery and a professional archeologist shall be retained by the Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Chief of the Division for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Chief of the Division of Water Rights.

(0000215)

28. The permittee shall obtain all necessary state and local agency permits and approvals required by other agencies prior to project construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Chief of the Division.

(0340804)

29. This permit shall not be construed as conferring upon the permittee a right to encroach upon neighboring property with waters or other features of the reservoir identified in this permit. Such encroachment shall require authorization from the neighboring property owner.

(9990999)

ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.
- (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
- (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State

Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 - 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable the State Water Resources Control Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(0000015)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
for Victoria A. Whitney, Chief
Division of Water Rights

Dated:

DEC 07 2005